**FOLLOW-UP INSPECTION OF THE SERIOUS FRAUD OFFICE**

**CASE PROGRESSION**

**SCOPING PAPER & INSPECTION FRAMEWORK**

**Background**

The Serious Fraud Office (SFO) is a specialist prosecuting authority tackling the most serious or complex fraud, bribery and corruption. It is part of the UK criminal justice system and covers England, Wales and Northern Ireland, but not Scotland, the Isle of Man or the Channel Islands. The SFO takes on a small number of cases and those they do take on are large and complex economic crime cases.  The SFO also pursues the financial benefits acquired from crime and assists overseas jurisdictions with their investigations. It has the power to both investigate and prosecute cases.

The SFO works with other law enforcement partners to tackle the challenges faced from serious and organised crime in line with the Government’s strategy. The SFO also works collaboratively with UK Government departments, and with overseas partners, such as the US Department of Justice, on matters where there is a common interest.

In October 2019 HMCPSI published an inspection report which examined case progression by the SFO. The inspection was in part as a result of the SFO’s own desire to improve the time cases took and its consequent request for an independent assessment of its handling of cases; there was a view from some stakeholders that cases took too long, and that some operational failures were as a result of poor case progression and case management. The 2019 inspection assessed case progression between the period of case acceptance through to charge. This period was chosen on the basis that it covers the timeframe of cases where the SFO has the most control over its timetable and the pace of activity, namely the investigation stage, case building stage, and the creation of the strategies including disclosure.

The inspection found that the SFO had clear and well documented internal casework processes, contained in an operational handbook which sets out what is expected (and in some instances mandated). However, there was inconsistency in application, with individual case managers operating in their preferred way and this can impact on the effectiveness and efficiency of case progression. In some of the cases examined[[1]](#footnote-1) inspectors found that this inconsistent and the personal approach of case controllers hampered the effective management and control of cases. Additionally, inconsistent compliance also increased the risk when change in case team and personnel happens. Whilst there is a clear internal guidance and expectations the SFO could do more to improve its assurance processes to ensure full and appropriate compliance.

The 2019 inspection also noted that unused material was handled reasonably well, and there were examples of very good consideration of the material and strong disclosure strategies. However, there were inconsistencies in practice here, too. Compliance with the handbook and the methods of different case controllers resulted in inconsistencies in approach and hampered case progression, particularly when a peer review highlighted problems, or a new case controller changed the original case strategy. This caused delay and re-work.

There were issues with resourcing with a lack of strategic oversight and little evidence that case resources were managed effectively or there was a clear understanding of resource needs by case controllers and senior managers. Whilst there was a strategic and tactical co-ordination group it did not examine cross-team resourcing. It was our view that the SFO needed to develop a strategic approach to resourcing and case management.

Case assurance and oversight needed improvement. There were various strands to the oversight and assurance of casework, including case review panels, Heads of Divisions’ meetings with case teams, and peer review. Many of the opportunities for assurance tended not to have a specific focus on case progression and looking at the entirety of the case. We found that case review panels varied in frequency and depth of analysis and tended to be more focussed on legal issues than case progression. We set out that Heads of Division could do more to challenge, influence and quality assure cases that are not progressing effectively.

The 2019 report set out 7 recommendations:

1. The Serious Fraud Office should develop a resourcing model that takes into account staff skills and time available to progress cases effectively.
2. The Serious Fraud Office should review resourcing in a holistic manner to ensure equity across cases in allocation of the teams and skills and reconsider allocation of the case controller and team when it becomes apparent that cases are not being taken forward promptly after acceptance.
3. The Serious Fraud Office should review resourcing across divisions to ensure that resources are allocated according to case needs, and in such a way that when changes are required, there is as little disruption as possible to case progression.
4. The Serious Fraud Office should be clear about the use of independent counsel, including guidance for case controllers on their deployment and monitoring, and a mechanism for evaluating the value for money they provide.
5. The Serious Fraud Office should develop understanding across the casework divisions of the impact of seizures on the digital forensic unit, and the need to be proportionate in their demands and expectations of this unit. This should be accompanied by measures to significantly reduce the impact of current delays on case progression.
6. The Serious Fraud Office should consider how it can improve the focus and delivery of training to support case progression. The Serious Fraud Office needs to develop a programme of learning and development that delivers the core skills for effective case progression.
7. Heads of Division should set and monitor key milestones in the investigation and prosecution of cases and should enforce compliance with the operational handbook.

**Context**

HMCPSI committed in its 2020-21 business plan to undertake a follow-up inspection to assess the progress made by the SFO to implement change to address the recommendations set out above. However due to the issues of the pandemic, and two high profile case failures (Unaoil and Serco) which were subject to independent reviews, HMCPSI delayed plans to conduct the follow-up inspection. The two reviews were published in July 2022 and both made a series of recommendations that repeated, to some degree, the findings of the 2019 HMCPSI case progression inspection. The scope of the proposed follow-up has been discussed with the SFO and other stakeholders and will in part make an assessment of progress since 2019, but also in response to the findings in the two reviews.

It is clear from our discussions with SFO that they consider our recommendations in the 2019 report mirror some of the themes that have emerged from the two recent reviews and accept that our follow up inspection will provide them with independent confirmation that they are focussing on the right areas and making progress with all recent and long standing recommendations. The SFO are keen for our follow up inspection to incorporate assessment of their implementation plan that they have developed to address the recommendations from both independent reviews. Their initial plan to address the concerns outlined in the Calvert-Smith and Altman reviews includes specific work streams on disclosure and five distinct themes:

* record keeping and case assurance;
* improving guidance, policies and training;
* compliance with policies;
* roles & responsibilities; and
* resources.

As disclosure featured heavily in both recent reviews, we will need to examine disclosure in more detail than in the 2019 case progression inspection. In the 2019 inspection, we examined disclosure from case acceptance to charge. With the follow up we will need to examine at least one case that goes beyond pre charge and has arrived at the door of the court. This will allow consideration of all aspects of disclosure including SFO/defence/court interaction in the process.

We are aware from our inspection on SFO leadership (also published in 2019) that there are continuing cultural challenges within the SFO. Culture and leadership will need to be a separate follow-up inspection to cover it fully, but it is inevitable that during the course of this case progression follow-up we will come across issues surrounding culture and leadership during our inspection as we engage with case teams and others. By adding this issue, to some extent to this first scope, we will be able to keep the SFO and the Law Officers informed of the long-term progress in respect of this critical issue.

**The Inspection Question**

Has the SFO made progress since the 2019 HMCPSI case progression inspection; have recommendations been implemented? Do the SFO have a grip on the case progression issues raised in recent case failures, and have a judicious plan to minimise further risks to the SFO?

**Aims**

The aims of the inspection are as follows:

* to determine whether the recommendations made by HMCPSI in the 2019 case progression inspection have been implemented and resulted in improvement;
* to assess, through a degree of case examination, whether the suggested changes included in the 2019 recommendations can be clearly seen as business as usual in the SFO operational management of cases, including:
  + to determine if there are appropriate and effective arrangements in place for the timely progression of cases, and that decisions are properly made, recorded and quality assured;
  + to determine whether there is effective leadership, management, quality assurance and oversight of casework progression to ensure cases are progressed efficiently, effectively and in a timely manner;
* to determine whether the issues with case progression identified in the Calvert-Smith and Altman reviews present risks to other casework or whether the issues that were identified were case specific.
* To assess the viability and sustainability of any change plans to address the case progression issues raised in the Calvert-Smith and Altman reviews.

The high-level questions and criteria can be found at Annex A.

**Methodology**

This inspection will examine the relevant parts of a sample of casework files as well as ‘real time’ observation of processes such as the case review meetings, case team meetings, case conferences, and supporting documentation. This work will primarily involve consideration of SFO generated case management documentation such as the investigation strategy documents created at the outset and decision logs, with findings validated by reference to other documentation, such as minutes from the case review meetings and the documentation set out in the Operational Handbook, and interviews with SFO casework staff. The sample size will be five cases where the majority of case progression has taken place post our 2019 report. The selected cases will be a mix of fraud, bribery and corruption offences across the teams. In order to capture the elements of the case progression issues raised by the two recent independent reviews, at least one of the five cases will be examined post charge. This departs from the remit of our 2019 inspection where we examined cases from case acceptance to up to the point of charge.

It is proposed that one inspector will examine a single case due to size and complexity and will seek the assistance of speaking to the case team directly to gain further insight into the cases that are not apparent from the case record. A further inspector or the lead inspector will moderate the file examination to ensure there is a consistent approach across the team.

The fieldwork will also involve consultation with relevant SFO staff and managers, and identified external stakeholders, including defence practitioners and counsel involved.

Internal documentation will be examined in relation to the governance and assurance of casework, and any relevant provision of training. There will be examination of relevant supporting processes and systems.

Deferred Prosecution Agreements are out of scope.

**Resources**

Once scoping has been completed there are four stages of this inspection each requiring a different level of resource:

Setting-Up Phase:. Business Support will deal with arrangements for access to cases and laptops. The lead inspector will select cases to be examined and the commencement of file examination via remote access. The examination of casework will be from the case evaluation board to the point of charge or case conclusion. The inspection team will require the assistance of a nominated SFO investigator/lawyer not attached to the case team who is available for the inspection team to consult throughout the file examination stage. Internal documents required will also be identified by the lead inspector. Any necessary training of legal inspectors in relation to the digital systems, casework processes and recent reviews will be undertaken at this stage. A list of interviewees will also be compiled and supplied to the SFO.

Fieldwork: The lead inspector supported by legal inspectors and business management inspectors will visit the SFO offices to conduct interviews with SFO managers and staff and external stakeholders. It is anticipated that the fieldwork will last approximately five weeks and may include some degree of file examination and direct communication with case teams about the examination of their case.

Analysis: Immediately following the completion of the on-site phase, members of the inspection team will reflect on the evidence gathered on site and collate their findings against the key criteria. This period can also be used to pursue issues that have arisen during fieldwork that remain outstanding. An early emerging findings meeting will be held with the SFO to enable further evidence to be garnered.

Report Writing: The Lead Inspector will be primarily responsible for writing any report. The Quality Assurer role will be assumed by the Quality Assurance Senior Inspector or the Deputy Chief Inspector.

**Timescales**

The table below sets out what are envisaged to be the broad timescales for the key stages of the inspection:

|  |  |  |
| --- | --- | --- |
| **Activity** | **Start Date** | **Length of Time**  **Required** |
| Setting Up | 26.09.22 | 8 weeks |
| Fieldwork | 21.11.22 | 5 weeks |
| Analysis | 09.01.23 | 4 weeks |
| Report Writing and QA | 06.02.23 | 5 weeks |

**Publication**

The report will be published in April 2023.

**Annex A: High level questions and sub criteria**

1. Have the recommendations made by HMCPSI in the 2019 case progression inspection been implemented and resulted in improvement?

* Have the SFO developed a resourcing model that takes into account staff skills and time available to progress cases effectively?
* Do the SFO take appropriate action if it becomes apparent that cases are not being progressed adequately?
* Is review of resourcing completed in a holistic manner considering the needs of case teams within and across the divisions?
* Is there effective guidance for case controllers on deployment of Counsel and mechanisms to monitor performance and evaluate value for money?
* Is there a collaborative working relationship between the digital forensic unit and case teams to ensure effective case progression?
* Are Head of Divisions setting and monitoring appropriate milestones and ensuring there is full compliance with the operational handbook?

1. Has the implementation of the 2019 recommendations resulted in improvements in case progression at an operational level and have there been enhancement in quality assurance of casework processes?

* Are case acceptance processes effective and timely?
* Is case allocation timely and contributes to the effective progression of cases?
* Does the Roskill model approach and the multi-disciplinary design of the investigation team enhance the progression of cases?
* Is the selection of Counsel and other experts robust and timely to ensure effective progression of cases?
* Are systems for file organisation, file endorsement, and data storage effective to enable the timely progression of cases?
* Are there adequate systems for dealing with correspondence?
* Are available digital systems used effectively to aid case progression?
* Are reviews of cases timely and proactive to enable early case strategy to provide focus for the investigation and prosecution of a case including the identification of ancillary applications?
* Is unused material dealt with properly in line with the law and SFO guidance to ensure timely and effective progression of cases?
* Are cases properly identified and flagged to ensure systems and processes are followed in accordance with the SFO handbook and are local measures in place for compliance?
* Is there appropriate day to day supervision and line management of staff to monitor the progression of cases?
* Is the internal leadership structure and case progression governance system effective?
* Do leaders of the organisation have sufficient influence over stakeholders to aid effective case progression?
* Are Case Review Meetings and other mechanisms effective in providing oversight of case progression and alive to risks to effective case progression?
* Are there effective systems to ensure the identification, organisation and dissemination of learning points with respect to case progression?
* Is performance data used to monitor the effectiveness of case progression?
* Is there continuity of case ownership throughout the life of a case and mecahanisms in place to minimise disruption when this is not possible?
* Do quality assurance processes provide senior managers with adequate assurance of the status of case progression within SFO?

1. Do the case progression issues identified in the Calvert-Smith and Altman reviews continue to present risks to the SFO.

* Is guidance and the standard of instructions to team members who deal with disclosure adequate to ensure that the SFO can discharge its disclosure obligations in a timely fashion?
* Do team members have the right level of experience for their roles and responsibilities to ensure cases progress expeditiously?
* Is there a good relationship between the investigative and prosecution arms of the team to aid case progression?
* Is there transparency of all interviews and meetings relevant to the cases and are these adequately recorded to ensure that cases do not stall?
* Is there sufficient quality assurance and oversight to ensure confidence in cases progressing at speed?
* Are case teams adequately resourced to enable cases to progress expeditiously?

1. Are the SFO plans to address the case progression issues raised in the Calvert-Smith and Altman reviews and address the recommendations in the 2019 report viable and sustainable?

* Are changes required for the management and appropriate dealing with disclosure taking place and are the changes likely to result in improvements in the disclosure process?
* Are proposed changes in record keeping and case assurance producing improved disclosure handling?
* Have the planned improvements of guidance and policies and system resulted in better compliance?
* Will improved guidance documentation available to staff aid a consistent and effective approach to case progression?
* Will changes ensure roles and responsibilities of staff are clearly defined and checks in place to ensure consistency?
* Has there been appropriate staff training to deal with effective progression of cases, or are plans feasible?
* Is there an effective plan to ensure staff resources are optimised to ensure cases progress without delay?

1. To undertake the inspection HMCPSI examined six cases in detail, looking particularly at the stage between case acceptance and charge. [↑](#footnote-ref-1)